



January 30, 2004

---

## HOUSE BILL No. 1068

---

DIGEST OF HB 1068 (Updated January 27, 2004 4:19 pm - DI 110)

**Citations Affected:** IC 2-3.5; IC 5-10.3; IC 10-12; IC 21-6.1; IC 36-8; noncode.

**Synopsis:** Withholding from pensions for child support. Provides that benefit payments from certain public pension funds are subject to withholding for child support.

**Effective:** July 1, 2004.

---

---

**Young D, Adams T, Moses,  
Lawson L**

---

---

January 13, 2004, read first time and referred to Committee on Judiciary.  
January 29, 2004, reported — Do Pass.

---

---

C  
o  
p  
y

HB 1068—LS 6222/DI 102+



January 30, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

C  
o  
p  
y

## HOUSE BILL No. 1068

---

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 2-3.5-4-11 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. **(a) Except as**  
3 **provided in subsections (b) and (c),** all benefits and assets in the  
4 defined benefit fund are exempt from levy, sale, garnishment,  
5 attachment, or other legal process. ~~However,~~  
6 **(b)** A participant's benefits may be transferred to reimburse the state  
7 for loss resulting from the participant's criminal taking of state property  
8 if the board receives adequate proof of the loss. The loss must be  
9 proven by conviction of a felony or misdemeanor.  
10 **(c) Notwithstanding any other provision of this chapter, any**  
11 **payment made to a participant from the defined benefit fund is**  
12 **subject to withholding in accordance with applicable law to enforce**  
13 **the participant's legal obligation to provide child support.**  
14 SECTION 2. IC 2-3.5-5-9 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. **(a) Except as**  
16 **provided in subsections (b) and (c),** all benefits and assets in the  
17 defined contribution fund are exempt from levy, sale, garnishment,

HB 1068—LS 6222/DI 102+



attachment, or other legal process. ~~However,~~

(b) A participant's benefits may be transferred to reimburse the state for loss resulting from the participant's criminal taking of state property if the board receives adequate proof of the loss. The loss must be proven by conviction of a felony or misdemeanor.

(c) **Notwithstanding any other provision of this chapter, any payment made to a participant from the defined contribution fund is subject to withholding in accordance with applicable law to enforce the participant's legal obligation to provide child support.**

SECTION 3. IC 5-10.3-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) **Except as provided in this subsection and subsection (d),** all benefits, refunds of contributions, and money in the fund are exempt from levy, sale, garnishment, attachment, or other legal process. However, the member's contributions or benefits, or both, may be transferred to reimburse his employer for loss resulting from the member's criminal taking of his employer's property by the board if it receives adequate proof of the loss. The loss resulting from the member's criminal taking of his employer's property must be proven by a felony or misdemeanor conviction.

(b) The board may withhold payment of a member's contributions and interest if the employer of the member notifies the board that felony or misdemeanor charges accusing the member of the criminal taking of the employer's property have been filed.

(c) The board may withhold payment of a member's contributions and interest under subsection (b) until the final resolution of the criminal charges.

(d) **Notwithstanding any other provision of this chapter, any payment made to a member from the fund is subject to withholding in accordance with applicable law to enforce the member's legal obligation to provide child support.**

SECTION 4. IC 10-12-2-10, AS ADDED BY P.L.2-2003, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person entitled to, having an interest in, or sharing a pension or benefit from the trust funds does not, before the actual payment of the pension or benefit, have the right to anticipate, sell, assign, pledge, mortgage, or otherwise dispose of or encumber the pension or benefit.

(b) **Except as provided in subsection (d),** a person's interest, share, pension, or benefit, before the actual payment of the interest, share, pension, or benefit, may not be:

(1) used to satisfy the debts or liabilities of the person entitled to

C  
o  
p  
y



the interest, share, pension, or benefit;

(2) subject to attachment, garnishment, execution, or levy or sale on judicial proceedings; or

(3) transferred by any means, voluntarily or involuntarily.

(c) The trustee may pay from the trust fund the amounts that the trustee determines are proper and necessary expenses of the trust fund.

**(d) Notwithstanding any other provision of this chapter, any payment made to an employee beneficiary from the trust fund is subject to withholding in accordance with applicable law to enforce the employee beneficiary's legal obligation to provide child support.**

SECTION 5. IC 21-6.1-5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 17. ~~Benefits Exempted from Legal Process; Assignment of Benefits.~~ (a) **Except as provided in subsection (c),** the benefits payable from the fund are exempt from seizure or levy on attachment, supplemental process, and all other processes.

(b) A member may not transfer any benefit payment; such a transfer is void. However, a member may assign benefits for paying:

(1) premiums on a group, life, hospitalization, surgical or medical insurance plan maintained in whole or in part by a state agency; and

(2) dues to any association which proves to the board's satisfaction that the association has as members at least twenty percent (20%) of the number of retired members of the fund.

**(c) Notwithstanding any other provision of this chapter, any payment made to a member from the fund is subject to withholding in accordance with applicable law to enforce the member's legal obligation to provide child support.**

SECTION 6. IC 36-8-6-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14. (a) If there is not sufficient money to the credit of the 1925 fund to pay all claims against it in full, claims arising from the death of members of the department shall be paid in full first with as little delay as possible, after which an equal percentage shall be paid upon all other claims to the full extent of the money on hand, until the fund is replenished.

(b) All pensions shall be paid by the treasurer of the local board at his office at the same time and in the same installments as the members of the police department are paid.

(c) **Except as provided in subsection (d),** all pensions payable out of the 1925 fund are exempt from seizure or levy upon attachment, execution, supplemental process, and all other process, whether mesne

C  
o  
p  
y



or final. Except as provided in section 21 of this chapter, pensions are not subject to sale, assignment, or transfer by a beneficiary.

**(d) Notwithstanding any other provision of this chapter, any payment made to a member from the 1925 fund is subject to withholding in accordance with applicable law to enforce the member's legal obligation to provide child support.**

SECTION 7. IC 36-8-7-22, AS AMENDED BY P.L.90-2002, SECTION 489, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 22. **(a) Except as provided in subsection (b),** the 1937 fund may not be, either before or after an order for distribution to members of the fire department or to the surviving spouses or guardians of a child or children of a deceased, disabled, or retired member, held, seized, taken, subjected to, detained, or levied on by virtue of an attachment, execution, judgment, writ, interlocutory or other order, decree, or process, or proceedings of any nature issued out of or by a court in any state for the payment or satisfaction, in whole or in part, of a debt, damages, demand, claim, judgment, fine, or amercement of the member or the member's surviving spouse or children. The 1937 fund shall be kept and distributed only for the purpose of pensioning the persons named in this chapter. The local board may, however, annually expend an amount from the 1937 fund that it considers proper for the necessary expenses connected with the fund. Notwithstanding any other law, neither the fiscal body, the county board of tax adjustment, nor the department of local government finance may reduce these expenditures.

**(b) Notwithstanding any other provision of this chapter, any payment made to a member from the 1937 fund is subject to withholding in accordance with applicable law to enforce the member's legal obligation to provide child support.**

SECTION 8. IC 36-8-7.5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. **(a) Except as provided in subsection (b),** all pensions, annuities, and benefits payable out of the 1953 fund are exempt from seizure or levy upon attachment, garnishment, execution, and all other process. Except as provided in section 23 **of this chapter,** pensions, annuities, and benefits are not subject to sale, assignment, or transfer by a beneficiary.

**(b) Notwithstanding any other provision of this chapter, any payment made to a member from the 1953 fund is subject to withholding in accordance with applicable law to enforce the member's legal obligation to provide child support.**

SECTION 9. IC 36-8-8-17, AS AMENDED BY P.L.183-2003,



C  
o  
p  
y

SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 17. (a) **Except as provided in subsection (d)**, the benefits of this chapter are exempt from attachment and garnishment and may not be seized, taken, or levied upon by any execution or process.

(b) Except as provided in subsection (c) and section 17.2 of this chapter, a person receiving a benefit under this chapter may not transfer, assign, or sell the benefit.

(c) Notwithstanding any other provision of this chapter, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L.102-318), and any amendments and regulations related to Section 401(a)(31), the 1977 fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

**(d) Notwithstanding any other provision of this chapter, any payment made to a member from the 1977 fund is subject to withholding in accordance with applicable law to enforce the member's legal obligation to provide child support.**

SECTION 10. IC 36-8-10-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) A person entitled to ~~a~~ **an** interest in or share of a pension or benefit from the trust funds may not, before the actual payment, anticipate it or sell, assign, pledge, mortgage, or otherwise dispose of or encumber it. In addition, **except as provided in subsection (b)**, the interest, share, pension, or benefit is not, before the actual payment, liable for the debts or liabilities of the person entitled to it, nor is it subject to attachment, garnishment, execution, levy, or sale on judicial proceedings, or transferable, voluntarily or involuntarily. The trustee may expend the sums from the fund that it considers proper for necessary expenses.

**(b) Notwithstanding any other provision of this chapter, any payment made to an employee beneficiary from the fund is subject to withholding in accordance with applicable law to enforce the member's legal obligation to provide child support.**

SECTION 11. [EFFECTIVE JULY 1, 2004] IC 2-3.5-4-11, IC 2-3.5-5-9, IC 5-10.3-8-9, IC 10-12-2-10, IC 21-6.1-5-17, IC 36-8-6-14, IC 36-8-7-22, IC 36-8-7.5-19, IC 36-8-8-17, and IC 36-8-10-19, all as amended by this act, apply to legal obligations to provide child support enforceable before, on, or after July 1, 2004.

C  
o  
p  
y



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1068, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LAWSON L, Chair

Committee Vote: yeas 12, nays 0.

**C  
o  
p  
y**

HB 1068—LS 6222/DI 102+

